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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,221	12/13/2001	Nathan S. Lewis	1034345-000091	9894

41790 7590 09/10/2007

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EXAMINER	
NOGUEROLA, ALEXANDER STEPHAN	
ART UNIT	**PAPER NUMBER**
1753	

NOTIFICATION DATE	DELIVERY MODE
09/10/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/017,221	**Applicant(s)** LEWIS ET AL.	
	Examiner ALEX NOGUEROLA	**Art Unit** 1753	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☒ They raise the issue of new matter (see NOTE below);
   (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: 9-17.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Alex Nogueroda
Alex Nogueroda
Primary Examiner
Art Unit: 1753

September 05 2007

Continuation of 3. NOTE: Applicant seeks to amend independent claims 16 and 17 to require that the sensor array comprise a plurality of different sensors instead of a plurality of different differentially responsive sensors. Applicant has not commented on the significance of this amendment . This amendment, if entered, would appear to require further search and consideration because it broadens the scope of the independent claims. Additionally it raises the issue of new matter. The specification refers repeatedly to a sensor array of differentially responsive sensors, not different sensors. See, e.g., [0012], [0016], [0019], [0022], [0035]. From Applicant's disclosure one with ordinary skill in the art at the time of the invention would understand "a sensor array of differentially responsive sensors" to be an array of sensors that operate on the same principle or modality ("(e.g., a chemically-sensitve resistor)" - [0022]) but differ from one another in their responses to particular analytes or compounds. This may be achieved by providing an array of compositionally different chemiresistors [0034] and [0035] Applicant likens the sensor array to an "electronic nose" which also conventially is just an array of sensors the work on the same principle. So Applicants amendment would broaden the claims to allow the sensor array to be a hodge-podge of sensors operating on different principles, such as an sensor array including an optical sensor, a chemiresistor, and a mass sensor. This would require new searching and does not appear to be supported by the original disclosure, so it would be new matter if entered. Nowhere in the spefication is an array of different sensors mentioned. Claim 11 appears to be the only possible support for this amendment since it mentions "a combination therof". But since this combination is not discussed it is not certain that it means a hodge-podge of different sensors working on different sensor principles, especially since it further limits "the diferent differentially responsive sensors". Applicant himself states, "However, the sensors used are in fact different sensors in that they comprise different materials that respond differently to an analyte (see, e.g., Figure 1A and Figure 5)." See the bottom of page 7 of the Amendment of August 27, 2007. Even if the amendment is suported a new enablement rejection may be required if it were entered. Also, this amendment if entered would materially increase the issues for appeal because claim 11, which depends from claim 16 refers to "the different differentially responsive sensors", not just "different sensors." So a rejection uder 35 U.S.C. 112, second paragraph (indefiniteness) would be necessary.

With regard to the rejections under 35 U.S.C. 112, first paragraph, Applicant still has not in the Examiners view bridged the canyon from a disclosure of using a sensor array of chemiresistors to determine the effect of gaseous alcohol on an enzyme to using an sensor array of optical, electrical, mechanical, magnetic, or physical sensors to determine the specific activity, chemical or physical property, or function or an unknown nucleic acid, protein, antibody, or antigen.

With regard to the rejections of claims 11, 16, and 17 under 35 U.S.C. 103(a) Applicant appears to argue that Ballantine can only be applied in a prior art rejection if used as an anticipatory reference, since Applicant notes that Ballantine does not teach all of the limitations of the claims it is used to reject. The Examiner does not understand why Applicant believes Ballantine can not be used in an obviousness rejection.

For the resons set forth above the amendment will not be entered and all of the rejections are maintained.